

1 SB98
2 126436-2
3 By Senators Holtzclaw, Orr, Irons, Dial, Bedford, Holley,
4 Williams and Whatley
5 RFD: Fiscal Responsibility and Accountability
6 First Read: 01-MAR-11

1 SB98

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ENGROSSED

A BILL
TO BE ENTITLED
AN ACT

Relating to personal and professional services contracts; amending Sections 29-2-41.1 and 41-16-72, Code of Alabama 1975, to provide further for emergency contracts.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 29-2-41.1, and 41-16-72, Code of Alabama 1975, are amended to read as follows:

"§29-2-41.1.

"In case of an emergency adversely affecting public health, safety, security, or the economic welfare of the state, so declared in writing to the Governor by the head of the institution or agency involved, setting forth the nature of the danger to public health, safety, security or the economic welfare of the state, contracts may be let to the extent necessary to meet the emergency without review by the committee. Any contract let pursuant to this section involving an emergency ~~adversely affecting the economic welfare of the~~

1 ~~state~~ shall be let for a period of not more than 60 days
2 during which time the committee shall review a contract for a
3 longer period of time if such services are required beyond the
4 60-day limit hereby imposed. The institution or agency may not
5 enter a second identical or substantially similar emergency
6 contract for those particular services within one calendar
7 year of the commencement of the initial emergency contract.

8 "Immediately upon the letting of an emergency
9 contract that will be followed by a subsequent contract of
10 longer duration, the head of the institution or agency
11 involved shall notify the committee of the emergency contract
12 and the subsequent contract, and the terms, purpose, duration,
13 and other information as requested by the committee regarding
14 the contracts. In instances when this notification is
15 received, the committee's 60-day review of the subsequent
16 contract will run concurrently with the term of the emergency
17 contract.

18 "§41-16-72.

19 "Any other provision of law notwithstanding, the
20 procurement of professional services by any agency,
21 department, board, bureau, commission, authority, public
22 corporation, or instrumentality of the State of Alabama shall
23 be conducted through the following selection process:

24 "(1)a. Except as otherwise provided herein,
25 attorneys retained to represent the state in litigation shall
26 be appointed by the Attorney General in consultation with the

1 Governor from a listing of attorneys maintained by the
2 Attorney General. All attorneys interested in representing the
3 State of Alabama may apply and shall be included on the
4 listing. The selection of the attorney or law firm shall be
5 based upon the level of skill, experience, and expertise
6 required in the litigation and the fees charged by the
7 attorney or law firm shall be taken into consideration so that
8 the State of Alabama receives the best representation for the
9 funds paid. Fees shall be negotiated and approved by the
10 Governor in consultation with the Attorney General. Maximum
11 fees paid for legal representation may be established by
12 executive order of the Governor.

13 "Nothing in this article and nothing in Chapter 15
14 of Title 36 modifies or repeals the exclusive authority of the
15 governing boards of the public institutions of higher
16 education to direct and control litigation involving their
17 respective universities and to employ and retain legal counsel
18 of their own choice, consistent with their broad powers of
19 management and control set forth in Chapters 47-56 of Title 16
20 and in the constitution. Provided further, nothing in this
21 article modifies or repeals the authority of the Attorney
22 General to direct and control litigation involving the state
23 or any agency, department, or instrumentality of the state, or
24 the authority of the Governor to appear in civil cases in
25 which the state is interested.

1 "b. Attorneys retained by any state purchasing
2 entity to render nonlitigation legal services shall be
3 selected by such entity from a listing of attorneys maintained
4 by the Legal Advisor to the Governor. All attorneys interested
5 in representing any purchasing state entity may apply and
6 shall be included on the listing. The selection of the
7 attorney or law firm shall be based upon the level of skill,
8 experience, and expertise required for the services, but the
9 fees charged by the attorney or law firm shall be taken into
10 consideration so that such state entity shall receive the best
11 representation for the funds paid. Fees for such services
12 shall be negotiated by the state entity requiring the services
13 and shall be subject to the review and approval of the
14 Governor or the Director of Finance when so designated by the
15 Governor.

16 "c. This article shall not apply to the appointment
17 by a court of attorneys or experts.

18 "d. This article shall not apply to the retention of
19 experts by the state for the purposes of litigation, or
20 avoidance of litigation.

21 "e. Nothing in this article shall be construed as
22 altering or amending the Governor's authority to retain
23 attorneys pursuant to Section 36-13-2, however, the Governor
24 shall select such attorneys from three proposals received from
25 attorneys included on the listing maintained by the Attorney
26 General.

1 "(2) Physicians retained to provide medical services
2 to the state shall be selected by the purchasing state entity
3 from a list of qualified physicians maintained by the Alabama
4 Medical Licensure Commission. All physicians interested in
5 providing medical services to the State of Alabama may apply
6 and shall be included on the listing.

7 "(3) Professional services of architects, landscape
8 architects, engineers, land surveyors, geoscience, and other
9 similar professionals shall be procured in accordance with
10 competitive, qualification-based selection policies and
11 procedures. Selection shall be based on factors to be
12 developed by the procuring state entity which may include,
13 among others, the following:

14 "a. Specialized expertise, capabilities, and
15 technical competence, as demonstrated by the proposed approach
16 and methodology to meet project requirements.

17 "b. Resources available to perform the work,
18 including any specialized services within the specified time
19 limits for the project.

20 "c. Record of past performance, quality of work,
21 ability to meet schedules, cost control, and contract
22 administration.

23 "d. Availability to and familiarity with the project
24 locale.

25 "e. Proposed project management techniques.

1 f. Ability and proven history in handling special
2 project contracts.

3 "Notice of need for professional services shall be
4 widely disseminated to the professional community in a full
5 and open manner. Procuring state entities shall evaluate such
6 professionals that respond to the notice of need based on such
7 state entity's qualification-based selection process criteria.
8 Any such procuring state entity shall then make a good faith
9 effort to negotiate a contract for professional services from
10 the selected professional after first discussing and refining
11 the scope of services for the project with such professional.
12 Where the Alabama Building Commission has set a fee schedule
13 for the professional services sought, fees shall not exceed
14 the schedule without approval of the Director of the Alabama
15 Building Commission and the Governor.

16 "(4) The Director of Finance, through the Division
17 of Purchasing of the Department of Finance, shall establish
18 and maintain lists of professional service providers, other
19 than those specifically named in this section, which may be
20 required from time to time by any state agency, department,
21 board, bureau, commission, authority, public corporation, or
22 instrumentality. When such professional services are needed,
23 the purchasing state entity shall solicit proposals from the
24 professional service providers desiring to receive requests
25 for proposals. The purchasing state entity shall select the
26 professional service provider that best meets the needs of the

1 purchasing entity as expressed in the request for proposals.
2 Price shall be taken into consideration. In the event the fees
3 paid to the selected professional service provider exceed by
4 10 percent the professional service fee offered by the lowest
5 qualified proposal, the reasons for selecting a professional
6 service provider ~~must~~ shall be stated in writing, signed by
7 the director of the purchasing state entity, and made a part
8 of the selection record.

9 "(5) Contracts for professional services shall be
10 limited only to that portion of a contract relating to the
11 professional service provided. Goods purchased by the state in
12 conjunction with the contract for professional services shall
13 be purchased pursuant to Section 41-16-20.

14 "(6) Should an emergency affecting the public
15 health, safety, ~~convenience,~~ or the economic welfare of the
16 State of Alabama so declared in writing under oath to the
17 Governor and the Attorney General by the state entity
18 requiring the professional services arise, the professional
19 services required to alleviate the emergency situation may be
20 procured from any qualified professional service provider
21 without following the process or procedure required by this
22 article. Any contract let pursuant to this subdivision
23 involving an emergency as herein specified may not be let for
24 a period of more than 60 days. During this time, if the
25 contract would otherwise be subject to review by the Contract
26 Review Permanent Legislative Oversight Committee, the

1 committee shall review a subsequent contract for a longer
2 period of time if such services are required beyond the 60-day
3 limit. The institution or agency may not enter a second
4 identical or substantially similar emergency contract for
5 those particular services within one calendar year of the
6 commencement of the initial emergency contract.

7 "Immediately upon the letting of an emergency
8 contract that will be followed by a subsequent contract of
9 longer duration, the state entity shall notify the committee
10 of the emergency contract and the subsequent contract, and the
11 terms, purpose, duration, and other information as requested
12 by the committee regarding the contracts. In instances when
13 this notification is received, the committee's 60-day review
14 of the subsequent contract will run concurrently with the term
15 of the emergency contract.

16 "(7) The process set forth herein for the selection
17 of professional service providers shall not apply to the
18 Legislature, the Alabama State Port Authority, or to colleges
19 and universities governed by a board of trustees or by the
20 Department of Postsecondary Education. The State Department of
21 Education shall not be subject to the provisions of this
22 article, requiring the process set forth herein for the
23 selection of professional service providers, except for the
24 future acquisition of professional services in support of
25 computer technology on a statewide basis which exceeds the
26 amount of expenditures set forth within this chapter. However,

1 if a state agency or department is able to provide the
2 necessary computer networking services, then the services
3 shall be provided by the agency or department without being
4 contracted to an outside provider. In the event the State
5 Department of Education has intervened into the financial
6 operations of a local board of education, the State Department
7 of Education shall follow the provisions of law applicable to
8 local boards of education for services related to the local
9 board of education subject to intervention.

10 "(8) Under any contract letting process in this
11 section, all requests for proposals from any state entity
12 purchasing professional services shall be sent to all
13 professional service providers regardless of race that have
14 notified the state of their interest in receiving state
15 business.

16 "(9) Under any contract letting process in this
17 section, all lists containing professional service providers
18 and contractors for contracts under the provisions of this
19 article shall seek the racial and ethnic diversity of the
20 state."

21 Section 2. This act shall become effective on the
22 first day of the third month following its passage and
23 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Fiscal Responsibility and Account-
ability..... 01-MAR-11

Read for the second time and placed on the calen-
dar 1 amendment..... 22-MAR-11

Read for the third time and passed as amended 24-MAR-11

Yeas 31
Nays 0

Patrick Harris
Secretary